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IN THE

Supreme Court of the United States

OCTOBER TERM

No. 16
1963

BANCO NACIONAL DE CUBA,

Petitioner,

—against—

PETER L. F. SABBATINO, as Receiver, and F. SHELTON FARR, WILLIAM F. PRESCOTT, EMMET WHITLOCK, LAWRENCE H. DIXON, H. BARTOW FARR, ELIZABETH C. PRESCOTT, FABIO FREITES and HELEN G. DOWNS, copartners doing business as FARR, WHITLOCK & Co.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY OF RESPONDENT, PETER L. F. SABBATINO, AS RECEIVER, TO MEMORANDUM FOR THE UNITED STATES

I.

The Solicitor General, in his memorandum, believes certiorari should be granted, and in support of his belief reviews the *Bernstein* litigation and the so-called "*Bernstein* letter" written to the Court by the Department of State in the second *Bernstein* case.

He purports to distinguish, without a difference, we submit, between the *Bernstein* letter and the *Chayes* and *Ball* letters (Pet.'s App. 46), and between the *Bernstein* letter and the *Kane* case telegram (Pet.'s App. 48). Whether formally sent, whether in response to correspondence, whether in or out of context, and whether they rise to the heights of the *Bernstein* letter, the letter and telegram are in fact the equivalent thereof.

Nowhere does the Solicitor General state that the Executive has repudiated its declared policy that the Cuban decrees under consideration are "manifestly in violation of those principals of international law which have long been accepted by the free countries of the "West" and concerning which the State Department made "indignant protest".

Whether the Circuit Court considered the letters and telegram as formal *Bernstein* letters is of no moment, it seems to us. The fact is that the Court could and did take the Executive's announced and unrepudiated declarations of condemnation of the Cuban decrees at face value and did determine, correctly, that to deny validity or effect to these obnoxious decrees would not conflict with, nor embarrass, "the executive and legislative branches of our Government in our dealings with foreign nations."

The Solicitor concludes that if this Court grants certiorari, he will then undertake "to present a full statement of the position of the Executive * * * upon the merits." So long as the Executive does not repudiate its declared enunciations of policy, and there is not even intimation that it might, this Court is asked to do a useless thing.

If anything, the Executive has reinforced its opinions of the conduct and decrees of the Cuban government by subsequent Executive action.

If the Executive had such a mind to do, the Solicitor could now present a statement accordingly, and not seek to delay a final determination in this case.

We disagree with his theory that this Court did not seek the Executive's views, on the merits, at this time. It sought the views of the United States, the answer to which was simple. Has the Executive repudiated the condemnation of these decrees and repudiated its view that the effect thereof was "for the Courts to determine"? If so, a simple statement to such effect could now be made. If not, certiorari is not warranted.

II.

We have read the Reply of the Respondent, Farr, Whitlock & Co., are in complete agreement with it and, in addition to the foregoing, adopt the same position on behalf of the Respondent, Receiver.

We should like to add to the presentation made on behalf of Farr, Whitlock, however, the following: The sugar company, Vertientes, 90% American owned, must be regarded under international law as an American national although organized under the laws of Cuba (Opinion of Court below; Pet.'s App. B., pp. 54-55). Our Courts are now asked, in effect by Cuba, to divest this American national of the proceeds of the sugar shipment and thus to implement Cuba's confiscatory decree.

CONCLUSION

THE PETITION FOR CERTIORARI SHOULD BE DENIED.

Dated: Brooklyn, New York,
January 17th, 1963.

Respectfully submitted,

HAROLD L. FISHER,
and
ROSS J. DILORENZO,
Attorneys for Peter L. F. Sabbatino,
Receiver-Respondent.

On the Memorandum:

HAROLD L. FISHER,
JOSEPH SLAVIN.